

with no armrests which caused strain on her neck, shoulders and arms.¹ On June 1, 2005 the Office accepted her claim for bilateral carpal tunnel syndrome. It subsequently accepted aggravation of fibromyalgia, resolved, temporary aggravation of migraine headaches, resolved, right arm reflex sympathetic dystrophy (RSD) and right medial nerve neuralgia that was secondary to her right carpal tunnel release surgery.² Appellant began receiving wage-loss compensation on May 19, 2004. A May 12, 2005 electromyogram (EMG) and nerve conduction study (NCS) revealed no evidence of carpal tunnel syndrome.

In reports dated January 17 and April 3, 2007, Dr. Daniel J. Schwartz, a Board-certified internist specializing in sleep disorders, stated that appellant underwent a sleep study that did not reveal significant respiratory abnormality (sleep apnea). He diagnosed a primary sleep disorder, associated with difficulty both in initiating and maintaining sleep. Dr. Schwartz did not address the cause of the sleep disorder.

On May 1, 2007 Dr. Lisa Flaherty, Board-certified in neurology by the American Osteopathic Association and an Office referral physician, reviewed appellant's medical history and provided detailed findings on physical examination. She found no evidence of residuals of appellant's accepted bilateral carpal tunnel syndrome, RSD, fibromyalgia or migraines. Dr. Flaherty indicated that the accepted condition of right medial nerve neuralgia had not resolved but it was not disabling. She indicated that appellant's sleep disorder and depression were not work related.

By decision dated December 26, 2007, the Office terminated appellant's wage-loss compensation and medical benefits effective November 28, 2007, with the exception of medical treatment for her right medial nerve neuralgia, on the grounds that the weight of the medical evidence established that she had no continuing disability or medical condition causally related to her March 31, 2004 employment injury. By decisions dated January 25, April 25 and August 15, 2008, it denied modification of its December 26, 2007 termination decision.³

In reports dated February 5 and September 9, 2008, Dr. Raj M. Eliazer, a physician specializing in clinical neurophysiology, reviewed appellant's medical history and provided findings on physical examination. He diagnosed bilateral carpal tunnel syndrome, fibromyalgia, RSD and anxiety. Dr. Eliazer did not address the cause of these conditions.

In a May 20, 2008 report, Dr. Kenneth P. Botwin, a Board-certified physiatrist, noted that he examined appellant as a new patient who had lumbar and cervical spine pain, right shoulder pain and right hand pain which she attributed to her employment. He provided physical findings on examination and diagnosed cervical spine stenosis and neuritis, carpal tunnel syndrome and

¹ Appellant has another accepted work injury for cervical, thoracic and lumbar strains sustained on April 17, 2002.

² The Office noted that appellant's preexisting medical conditions included fibromyalgia, chronic fatigue syndrome, osteoarthritis and migraine headaches.

³ On March 19, 2008 appellant requested that her claim be expanded to include depression. She alleged that constant pain from her accepted medial nerve neuralgia caused her depression.

“pain in limb.” Dr. Botwin did not opine as to the cause of these conditions. He recommended an EMG and NCS and consultation with an orthopedic spine surgeon.

In a June 11, 2008 report, Dr. Anthony F. Kirkpatrick, a physician specializing in pain medicine, reviewed the medical history and provided findings on physical examination. He noted that appellant had significant swelling in her right hand and two trigger points in the right shoulder. An infrared scanner revealed that appellant’s right forearm was two degrees cooler than normal. The remainder of the examination was unremarkable. Dr. Kirkpatrick diagnosed primary right carpal tunnel syndrome complicated by RSD. The RSD was itself complicated by myofascial pain syndrome with trigger points in the right shoulder as well as significant depression. On August 23, 2008 Dr. Kirkpatrick stated that appellant advised him of recent actions by the Office that he found disturbing. The Office found that a negative bone scan ruled out RSD, also known as complex regional pain syndrome (CRPS). He opined that the Office’s conclusion contradicted scientific publications on the subject. Dr. Kirkpatrick asserted that a bone scan had never been validated as a reliable diagnostic test for RSD and, in his experience, the bone scan was normal in many cases of well-documented RSD. He stated that the objective findings overwhelmingly supported the diagnosis of RSD.

In reports dated January 17 and 21, March 28, April 23 and September 22, 2008, Dr. Walter E. Afield, a Board-certified specialist in neurology and psychiatry, reviewed appellant’s medical history and noted that neurodiagnostic testing was performed.⁴ He diagnosed major depression, fibromyalgia, RSD, migraine headaches, carpal tunnel syndrome and supraspinatus tendinopathy in appellant’s right upper extremity, all of which caused chronic pain and total disability. Dr. Afield opined that appellant’s emotional condition developed as a result of her work-related medical conditions and was becoming worse. He expressed his disagreement with the 2007 findings of Dr. Flaherty that appellant did not have RSD, migraines or fibromyalgia.

In reports dated January 25 and February 16, 2008 and a February 15, 2008 baseline sleep study report, Dr. Frank Scott Perrino, a Board-certified internist specializing in sleep medicine, diagnosed distorted sleep architecture manifested by a distinct lack of delta sleep and rapid eye movement (REM) sleep, severe sleep fragmentation and poor sleep efficiency. He noted that appellant had a history of fibromyalgia and insomnia, also chronic fatigue syndrome, anxiety, depression, memory loss, chronic headaches, hypothyroidism, irritable bowel syndrome, recurrent bronchitis, pneumonia and allergies. Dr. Perrino noted that appellant had a family history of sleep disorders. He indicated that sleep deprivation and fragmentation were a cause or aggravating factor in fibromyalgia patients and patients with depression. On July 1, 2008 Dr. Perrino stated that there was clear continuity in appellant’s case which was initiated as a case of worsening carpal tunnel syndrome, worsening fibromyalgia, worsening sleep and RSD. He indicated that there was a logical and scientific progression of her conditions. Dr. Perrino opined that appellant was totally disabled due to her sleep disorder and fibromyalgia. In a September 22, 2008 report, he noted that appellant’s disability claim had been denied. Dr. Perrino explained his disagreement with the opinion of Dr. Flaherty who examined appellant

⁴ There is a medical transcription error in Dr. Afield’s March 28, 2008 report in that Dr. Perrino is referred to as Dr. Corrino.

on May 1, 2007 and found no residuals of appellant's accepted bilateral carpal tunnel syndrome, RSD, fibromyalgia or migraines.

Appellant requested reconsideration. By decision dated January 16, 2009, the Office denied appellant's claim for wage-loss compensation and medical benefits on the grounds that the medical evidence did not establish any work-related disability or medical condition after November 28, 2007.⁵

LEGAL PRECEDENT

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.⁶ In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁷

ANALYSIS

The Board finds that, following the termination of appellant's wage-loss compensation and medical benefits on November 28, 2007, she failed to establish that she had any continuing disability or medical condition causally related to her March 31, 2004 employment-related conditions, bilateral carpal tunnel syndrome, aggravation of fibromyalgia, resolved, temporary aggravation of migraine headaches, resolved, right arm RSD and right medial nerve neuralgia secondary to her right carpal tunnel release surgery.

In reports dated February 5 and September 9, 2008, Dr. Eliazer reviewed appellant's medical history and provided findings on physical examination. He diagnosed bilateral carpal tunnel syndrome, fibromyalgia, RSD and anxiety. Anxiety is not an accepted condition and Dr. Eliazer did not provide sufficient explanation as to how this condition was causally related to appellant's job. He did not address the issue of whether appellant was disabled on or after November 28, 2007 due to her accepted medical conditions. For these reasons, the opinion of Dr. Eliazer is not sufficient to establish a work-related disability after November 28, 2007.

On May 20, 2008 Dr. Botwin noted that he examined appellant as a new patient who had lumbar and cervical spine pain, right shoulder pain and right hand pain which she attributed to her employment. He provided physical findings on examination and diagnosed cervical spine stenosis and neuritis and carpal tunnel syndrome. Dr. Botwin did not address the cause of the cervical spine stenosis and neuritis, which are not accepted conditions. He did not opine that

⁵ Subsequent to the January 16, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁶ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); *see Fred Foster*, 1 ECAB 127, 132-33 (1948).

⁷ *I.J. supra* note 6; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); *see Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

appellant was disabled on or after November 28, 2007 due to her accepted carpal tunnel syndrome. Therefore, Dr. Botwin's report does not establish that appellant had a work-related disability or medical condition on or after November 28, 2007 causally related to her employment.

On June 11, 2008 Dr. Kirkpatrick diagnosed primary right carpal tunnel syndrome complicated by RSD. The RSD was itself complicated by myofascial pain syndrome with trigger points in the right shoulder as well as significant depression. However, Dr. Kirkpatrick did not address the issue of whether appellant had any employment-related disability or medical condition on or after November 28, 2007. On August 23, 2008 he commented on a notation in the Office's August 15, 2008 decision which pointed out that he had not discussed, in his June 11, 2008 report, a November 2, 2007 bone scan that failed to show active signs of RSD. Dr. Kirkpatrick opined that a bone scan had never been validated as a reliable diagnostic test for RSD and, in his experience, a bone scan was normal in many cases of well-documented RSD. He stated that the objective findings overwhelmingly supported the diagnosis of RSD. However, Dr. Kirkpatrick did not provide a rationalized explanation as to how appellant was disabled on or after November 28, 2007 causally related to his accepted RSD or any of his other accepted conditions which the Office found had resolved at the time of its December 26, 2007 termination decision. Therefore, his reports do not establish an employment-related disability or medical condition on or after November 28, 2007.

In reports dated January 25, February 15 and 16, July 1 and September 22, 2008, Dr. Perrino diagnosed distorted sleep architecture manifested by a lack of delta and REM sleep, severe sleep fragmentation and poor sleep efficiency. He indicated that appellant had a history of fibromyalgia and insomnia, also chronic fatigue syndrome, anxiety, depression, memory loss, chronic headaches and several other conditions. Dr. Perrino noted that appellant had a family history of sleep disorders. He stated that sleep deprivation and fragmentation were a cause or aggravating factor in fibromyalgia patients and patients with depression. Dr. Perrino opined that there was a logical and scientific progression of appellant's conditions through worsening carpal tunnel syndrome, worsening fibromyalgia, worsening sleep and RSD. He indicated that appellant was totally disabled due to her sleep disorder and fibromyalgia. However, the Office has not accepted a sleep disorder in this case. In light of appellant's family history of sleep disorders noted by Dr. Perrino, he failed to provide sufficient rationale explaining how the sleep disorder was causally related to appellant's accepted carpal tunnel syndrome, fibromyalgia and RSD. Although he opined that appellant's accepted fibromyalgia caused disability, he did not provide specific dates of disability. Dr. Perrino expressed his disagreement with the opinion of Dr. Flaherty who examined appellant on May 1, 2007 and found no residuals of appellant's accepted bilateral carpal tunnel syndrome, RSD, fibromyalgia or migraines. However, the issue on appeal is whether appellant had any disability or medical condition on or after November 28, 2007 causally related to his accepted medical conditions. Dr. Flaherty's report addressed appellant's impairment as of May 1, 2007. Therefore, Dr. Perrino's disagreement with Dr. Flaherty's May 1, 2007 report is not relevant to the issue on appeal. The Board finds that Dr. Perrino's reports do not establish that appellant had any work-related disability or medical condition on or after November 28, 2007.

In reports dated December 17, 2007 to September 22, 2008, Dr. Afield diagnosed major depression, fibromyalgia, RSD, migraine headaches, carpal tunnel syndrome and supraspinatus

tendinopathy in appellant's right upper extremity, all of which caused chronic pain and total disability. He opined that all the diagnosed conditions were causally related to appellant's employment. However, right upper extremity supraspinatus tendinopathy and depression are not accepted conditions. Dr. Afield did not provide a rationalized explanation as to how these conditions were causally related to appellant's job. He did not provide objective findings on physical examination and test results to establish that appellant was disabled on or after November 28, 2007 due to her accepted fibromyalgia, RSD, migraine headaches, carpal tunnel syndrome or right medial nerve neuralgia. Dr. Afield expressed his disagreement with the 2007 findings of Dr. Flaherty that appellant did not have RSD, migraines or fibromyalgia. However, as noted, Dr. Flaherty examined appellant on May 1, 2007. The issue on appeal is whether appellant had any disability or medical condition on or after November 28, 2007 causally related to her accepted medical conditions. Dr. Afield did not provide a rationalized medical opinion, supported by findings on physical examination and objective test results, establishing that appellant was disabled on or after November 28, 2007 as a result of her accepted medical conditions. Therefore, his reports do not discharge appellant's burden of proof.

The Board finds that the medical evidence is not sufficient to establish that appellant had any disability or medical condition after November 27, 2007 causally related to his accepted medical conditions. Accordingly, the Office properly denied appellant's claim for wage-loss compensation and medical benefits after November 28, 2007.

On appeal appellant asserts that the weight of the medical evidence is on her side. However, for the reasons given, the medical evidence fails to establish that she had any work-related disability or medical condition on or after November 28, 2007 causally related to her accepted medical conditions. Therefore, this argument is without merit.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had any work-related disability or medical condition after November 28, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 16, 2009 and August 15 and April 25, 2008 are affirmed.

Issued: November 19, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board